APPEAL NO. 021026
FILED JUNE 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 5, 2002. The hearing officer listed the disputed issues as: (1) whether the appellant's (claimant) back, buttocks, and left ankle are part of the compensable injury of _____; and (2) whether the claimant has had disability. Based on an agreement which the hearing officer states in his decision was made orally on the record, the hearing officer decided that the compensable injury of _____, includes the left knee and lower back; that the compensable injury of _____, does not include the buttocks and left ankle; that the claimant had disability from April 20, 2000, to August 29, 2001; that the claimant reached maximum medical improvement (MMI) on August 29, 2001, per the report of Dr. K, the designated doctor; and that the claimant's impairment rating (IR) is six percent per Dr. K. The claimant appealed, expressing disagreement with the hearing officer's determinations on the extent of the compensable injury and the IR. The respondent (carrier) responded, stating that the parties reached a benefit dispute agreement (BDA) before the CCH; that the BDA was signed by the parties; that the BDA was offered at the CCH; that the hearing officer issued his decision encompassing the BDA; that the claimant has offered no basis to challenge the BDA; and that a copy of the BDA is attached to the response. The BDA was not with the response received by the Appeals Panel and it is not listed as an exhibit in the hearing officer's decision.

DECISION

We reverse and remand for reconstruction of the CCH record and for compliance with Section 410.164(c).

Section 410.203(a) provides that the Appeals Panel shall consider the record developed at the CCH, the written request for appeal, and the response. The CCH record has not been provided to the Appeals Panel. Since the hearing officer states that his decision is based on an agreement that was made orally on the record, a record must have been made. Consequently, we remand for reconstruction of the CCH record. If a BDA was offered and admitted at the CCH, then it should be included in the record. The hearing officer's decision does not list a BDA as an exhibit.

In addition, the hearing officer should explain in his decision on remand why MMI and IR are being decided when his decision reflects that the disputed issues concerned only the extent of the compensable injury and disability.

We note that in the appeals file there is a letter dated March 22, 2002, which is not listed or marked as a CCH exhibit, from the claimant's attorney to the hearing officer which has attached to it a BDA that appears to have been signed by the claimant's attorney, the carrier's representative, and the claimant, but not by a benefit review

officer or by a hearing officer. Section 410.166 provides that a written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(b) (Rule 147.4(b)) provides that a written agreement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer; that the presiding officer will review the agreement to ascertain that it complies with the 1989 Act and the rules, and, if so, sign it, and furnish copies to the parties; and that a written agreement is effective and binding on the date signed by the presiding officer. Rule 147.4(c) provides that an oral agreement reached during a benefit CCH and preserved in the record is effective and binding on the date made.

We also remand for the purpose of obtaining compliance with House Bill 2600, which amended Section 410.164, effective June 17, 2001. Section 410.164 was amended by the addition of subsection (c), which provides as follows:

> (c) At each [CCH], as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the [CCH].

The hearing officer's decision lists the insurance carrier information form as Hearing Officer's Exhibit No. 2; however, that exhibit was not sent to the Appeals Panel.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge